

31A-5-217.5 Variable contract law.

- (1) This section applies to a separate account that is used to support one or more of the following:
 - (a) a variable life insurance policy that satisfies the requirements of Section 817, Internal Revenue Code;
 - (b) a variable annuity policy, including a modified guaranteed annuity; or
 - (c) benefits under a plan governed by the Employee Retirement Income Security Act of 1974.
- (2) If there is a conflict between this section and another section of this title as it relates to a separate account described in Subsection (1), this section prevails.
- (3)
 - (a) Subject to the other provisions of this Subsection (3), a domestic life insurer may:
 - (i) establish one or more separate accounts; and
 - (ii) allocate to those separate accounts amounts, which include:
 - (A) proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance or annuities; and
 - (B) benefits incidental to life insurance or annuities, payable in fixed, variable, or both fixed and variable amounts.
 - (b) An insurer shall credit to or charge against a separate account the income, gains, and losses, realized or unrealized, from assets allocated to the separate account, without regard to other income, gains, or losses of the insurer.
 - (c) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in Subsection (3)(d):
 - (i) an insurer may invest or reinvest amounts allocated to a separate account and accumulations on those amounts without regard to the requirements or limitations prescribed by the laws of this state governing the investments of a life insurer; and
 - (ii) an insurer may not take into account the investments in a separate account in applying the investment limitations that otherwise apply to the investments of the insurer.
 - (d) Except with the approval of the commissioner and under any condition the commissioner prescribes as to investments and other matters, which shall recognize the guaranteed nature of the benefits provided, an insurer may not maintain in a separate account reserves for:
 - (i) benefits guaranteed as to dollar amount and duration; and
 - (ii) funds guaranteed as to principal amount or stated rate of interest.
 - (e)
 - (i) Except as provided in Subsection (3)(e)(ii) and unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued:
 - (A) at their market value on the date of valuation; or
 - (B) if there is no readily available market, then as provided under the terms of the contract, rules, or other written agreement that applies to the separate account.
 - (ii) Unless otherwise approved by the commissioner, the portion of the assets of a separate account that are equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in Subsection (3)(d) shall be valued in accordance with the rules that otherwise apply to the company's assets.
 - (f)
 - (i) An insurer owns the amounts it allocates to a separate account in the exercise of the power granted by this section, and the insurer may not be, nor hold itself out to be, a trustee with respect to those amounts.
 - (ii) To the extent provided under the applicable insurance policy, an insurer may not charge the portion of the assets of a separate account that is equal to the reserves and other

insurance liabilities with respect to the separate account with liabilities arising out of any other business the insurer may conduct.

(g)

- (i) A sale, exchange, or other transfer of assets may not be made by an insurer between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:
 - (A) in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the insurance policies with respect to the separate account to which the transfer is made; and
 - (B) the transfer, whether into or from a separate account, is made by:
 - (I) a transfer of cash; or
 - (II) if the transfer of securities is approved by the commissioner, a transfer of securities having a readily determinable market value.
 - (ii) The commissioner may approve a transfer not described in Subsection (3)(g)(i) among the accounts described in Subsection (3)(g)(i) if, in the commissioner's opinion, the transfer would not be inequitable.
- (h) To the extent an insurer considers it necessary to comply with an applicable federal or state law, the insurer with respect to a separate account, including a separate account which is a management investment company or a unit investment trust, may provide for a person having an interest in the separate account to have appropriate voting and other rights and special procedures for the conduct of the business of the separate account, including:
- (i) special rights and procedures relating to investment policy;
 - (ii) investment advisory services;
 - (iii) selection of independent public accountants; and
 - (iv) the selection of a committee, the members of which need not be otherwise affiliated with the insurer, to manage the business of the separate account.

Amended by Chapter 10, 2010 General Session

Amended by Chapter 324, 2010 General Session